

Ryan M. Shannon

From: Yeager, Jay <Jay.Yeager@faegrebd.com>
Sent: Tuesday, July 24, 2018 9:19 PM
To: Ryan M. Shannon
Cc: Giffin, Matt; Mark Brewer (mbrewer@goodmanacker.com)
Subject: meet and confer follow up

Ryan,

This is to follow up on our meet and confer discussions of the past few days.

First, while we are not in a position to begin dismissing district-by-district claims until we have seen subpoenaed documents and deposed legislative and other witnesses, here is a list of non-VRA districts as to which our investigation and discovery to date reveal district-specific evidence of gerrymandering:

Congress: 1, 4-12

State Senate: 7-15, 18, 22-24, 27, 29, 32, 36

State House: 11, 12, 14, 16, 18-21, 24, 25, 30-32, 36, 39, 40, 43-45, 48-55, 57, 60, 62, 63, 65, 67-69, 75, 76, 80, 83, 87, 91, 92, 94-96, 98, 103, 105-107

Though complete responses to contention-style discovery must await completion of discovery, we can at this point say that in general the district-by-district evidence demonstrating this gerrymandering will include what you already have from our experts, primarily Prof. Chen, documents already produced in discovery and transmitted to you, and testimony from witnesses on our preliminary disclosure as supplemented below. Like you we would prefer to be farther along in this process but we have yet to take depositions and as you may know the Republican legislators and legislative bodies have not yet made meaningful, let alone full, production on the subpoenas we served in February and as to which the Court in May ordered responses. We suggest the parties stipulate to an omnibus discovery supplementation date on which we would both supplement all discovery responses.

Second, you and I discussed in June Prof. Chen's personal situation. As soon as possible next week I will revisit with Prof. Chen the subject of the code problems you have raised. I will report to you promptly whatever I learn beyond what I conveyed to you when you and I addressed this over the weekend of June 23-24.

Third, Prof. Mayer reports no additional "facts or data that the parties' attorney provided and that the expert considered in forming the opinions" as required by Rule 26(b)(4)(C)(ii). I will supply that information for Prof. Chen next week, but I anticipate his answer will likely be the same. Prof. Warshaw reports that he consulted with the following persons on the following topics:

- Carl Klerner (independent researcher) regarding data on state legislative elections.
- Eric McGhee at the Progressive Policy Institute of California (PPIC) regarding estimates of the Efficiency Gap in congressional elections that he developed for a report published by the PPIC. We also corresponded about appropriate methodologies to estimate the Efficiency Gap in states with multimember districts.
- Nick Stephanopoulos at the University of Chicago Law School for estimates of the Efficiency Gap in state legislative elections developed by Simon Jackman, and data Stephanopoulos assembled on political control of the redistricting process.
- Laura Royden at the Brennan Center for the Brennan Center's estimates of the Efficiency Gap in congressional elections and data on political control of the redistricting process in these elections.
- Greg Warrington at UVM regarding the 'declination' measures for gerrymandering that he developed in a recent paper.

- The National Committee for an Effective Congress (NCEC) to try to obtain data on presidential vote share in state legislative districts in the 1970s and 1980s. They had no such data available.
- Steve Rogers (St. Louis University) to ask questions about his publicly available estimates of presidential vote share in state legislative districts in the 2004 and 2008 elections.
- Michael McDonald (University of Florida) to ask questions about his publicly available estimates of presidential vote share in state legislative districts in the 2000 election.
- Gerald Wright (Indiana University) about estimates of presidential vote share in state legislative districts in the 2000 election that he and co-authors developed for an unpublished working paper.
- Gary Jacobson (UCSD) to ask questions about publicly available data he assembled on presidential vote share in congressional districts.

Fourth, Prof. Mayer does not have the shape files you refer to. I will need to get them from Prof. Chen next week.

Fifth, you will recall that our preliminary disclosures identified certain persons by category. We'd like to supplement that by identifying by name certain legislative personnel as persons with knowledge: Sen. Jim Ananich, Sen. Steve Bieda, Rep. Lisa Brown, Mark Burton, Rep. Barb Byrum, Rep. Brandon Dillon, Rep. Fred Durhal, Rep. Christine Greig, Rep. Richard Hammel, Sen. Bert Johnson, Robert McCann, Mike McCollum, Ben Miller, John Mulcrone, Rep. David Nathan, Jack Schmitt, Sen. Virgil Smith, Rep. Thomas Stallworth, Rep. Woodrow Stanley, Mike Vatter and Sen. Gretchen Whitmer.

Sixth, we have as you would expect discussed in emails with counsel for subpoena targets the timing and scope of electronic searches in responses to subpoenas served. I am in the process of collecting the emails that reflect agreements regarding the scope or response time for the subpoenas, which are in the possession of various lawyers on this side of the case. You have asked further for emails concerning the "method of production." I am not sure exactly what you mean by that but will be glad to consider it if you can elaborate. Finally, without waiving the work product issue, I don't see the relevance, even for discovery purposes, of our lawyers' other communications with non-parties generally. Maybe that is not what you are now seeking, but if it is I would be willing to discuss it further to make sure I understand the scope of your request and your position.

Please let me know if I have failed to address anything you understood we had agreed upon.

Thanks.

Jay

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